STATUS OF CLAIMS

21-30 (Cancelled)

31. (Currently amended) A composition comprising a Clostridial neurotoxin joined to a drug~~. the clostridial neurotoxin of claim 21.~~

32. (Currently amended) ~~A~~ The composition of claim 31 wherein said Clostridial neurotoxin is an active Clostridial neurotoxin~~.comprising the clostridial neurotoxin of claim 23.~~

33. (Cancelled)

34. (Currently amended) ~~A~~ The composition of claim 31 wherein said drug is an intracellular acting drug. ~~comprising the Clostridial neurotoxin of claim 28.~~

35. (New) The composition of claim 31 wherein said Clostridial neurotoxin is selected from the group consisting of tetanus toxin, botulinum toxin A, botulinum toxin B, botulinum toxin C; botulinum toxin D, botulinum toxin E, botulinum toxin F, and botulinum toxin G.

36. (New) The composition of claim 31 wherein said drug is selected from the group consisting of: a protein synthesis toxin, an inhibitor of neurotransmitter release, a neuronal calcium channel blocker, a ribozyme and an oligonucleotide.

Applicants provisionally elect to prosecute Examiner's Group IV, with traverse, and provisionally cancel claims 21-30 and 33. Applicants traverse concerns the propriety of dividing the claims based on the drug being coupled to the Clostridial neurotoxin being an extracellular drug or an intracellular drug. Applicants do not traverse (except reserving the right of rejoinder) the restriction of method (Groups I and II) and composition (Groups III and IV) claims on that basis alone.

The Examiner has indicated that method claims 21-30 (containing a single independent claim; claim 21) should be the subject of a restriction requirement. The Examiner acknowledges that the method of Group I (a method of treating a neurological dysfunction, said to be claimed in claims 21-27, 29 and 30) has the same purpose as the method of his Group II (a method of treating a neurological dysfunction). The only distinction that the Examiner makes is that the method of Group I allegedly makes use of a Clostridial neurotoxin coupled to an extracellular drug, and the method of Group II makes use of a Clostridial neurotoxin coupled to an intracellular drug. The composition claims (31-34) of Groups III and IV have been divided using the same rationale.

In order for a restriction requirement to be proper, two requirements must be met: first the alleged inventions must be shown to be separate and distinct. Secondly, the Examiner must demonstrate a serious burden unless restriction is made. See MPEP 803.

Concerning the first requirement, the Examiner states that Inventions I and II are independent and distinct because these Groups are "drawn to different methods with differing steps and differing goals and utilizing different reagents". Applicants disagree. Groups I and II encompass the same method using different regents with possibly identical steps and identical goals. Applicants also note that embodiments of the method within each of the Examiner's Groups also employ different regents. So there is really no logical distinction that can be made between embodiments in a single Group and embodiments within each Group.

The same can be said for the composition claims of Groups III and IV, whose only difference is in the moiety to be coupled to the neurotoxin. But this moiety will be different for embodiments within each Group as well.

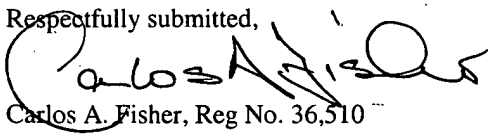
Independent means there is no disclosed relationship between the two or more subjects disclosed. MPEP 802.1 Certainly these claims are related (a Clostridial neurotoxin relates all the claims), and Examiner has provided no argument or evidence to the contrary.

With regard to the second requirement, Applicants point out that the Examiner has indicated that Groups I and II (and Groups III and IV) fall within the same class and subclass – that is to say, a search of one "Group" is likely to

result in art relating to the other "Group". There is absolutely no evidence of any hardship, such as an increased search burden, to the Examiner.

Applicants authorize the use of Deposit Account No. 01-0885 for the payment of the petition fee under 37 CFR 1.17(m), and for the payment of any other fee that may be due in connection with this correspondence.

Respectfully submitted,



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